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STATE OF NEW YORK  
DEPARTMENT OF TRANSPORTATION  
ALBANY, N.Y. 12232  
www.nysdot.gov

ASTRID C. GLYNN  
COMMISSIONER

DAVID A. PATERSON  
GOVERNOR

September 8, 2008

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 I. Street, SW  
Washington, DC 20024

Dear Secretary Quinlan

Re The New York, Susquehanna and Western Railway  
Corporation  
- Discontinuance of Service Exemption -  
In Broome and Chenango Counties, NY  
STB Docket No AB-286 (Sub-No 5X)

Dear Secretary Quinlan

Pursuant to the provisions of 49 CFR 1152.50(3), the New York State Department of Transportation (NYSDOT) hereby submits this Petition requesting a stay of the above-listed subject matter. The portion of the New York, Susquehanna and Western Railway Corporation (NYSW) Utica Main line of railroad included in the Discontinuance of Service Exemption is between Mile Post 202.62 at or near Chenango Forks, Broome County, New York and Mile Post 243.64 at or near Sherburne, Chenango County, New York (the "Line")

NYSDOT is requesting this stay on other than environmental or historic preservation grounds and I am filing this request as an attorney who is licensed to practice law in the State of New York

**Background:**

On June 26, 2006, severe flooding in the Delaware River and Susquehanna River watershed inflicted widespread damage to the transportation infrastructure in the Southern Tier of New York State. We understand that railroads may have been especially hard hit and the

NYSW's Syracuse Main, Utica Main, and the NYSW's affiliated Central New York Railway suffered damages in excess of \$14 million

Based on information provided by the NYSW to NYSDOT, the NYSW utilized their insurance proceeds and grants from the New York State Department of Labor's Individual & Family Grant Program, the New York State Empire State Development Corporation's Small Business Flood Recovery Grant Program, as well as their own working capital to make repairs to the Syracuse Main, Southern Tier Main and northern portion of the Utica Main, between Sherburne and Utica. However, the funds available were not sufficient to repair all the damage to the railroad and approximately \$400,000 (as of 2006) in damages remain on a portion of the Line, consisting primarily of washouts and wash-ins.

The NYSW claims to have not served any customers on the Line since 2002 and is able to serve existing customers north of the damaged area from its base of operations in Utica. The NYSW, therefore, indicated that they could not justify the expenditure of additional funds to make the remaining repairs and the Line has remained out-of-service since 2006.

#### **NYSW's Past Public Investments:**

NYSDOT has made substantial capital investments to preserve and upgrade NYSW's rail system and a portion of those public funds have been expended on the Line. A review of NYSDOT's records indicates that NYSDOT has provided the NYSW a total of \$2,642,475 for infrastructure improvements on the Line, consisting of six contracts for \$1,961,785 in track and structure rehabilitation and seven contracts totaling more than \$680,690 in highway/railroad grade crossing upgrades. A summary table of these investments can be found in Appendix A.

#### **NYSW's Contractual Obligations:**

Under the terms of the various contracts between the NYSW and NYSDOT, the State of New York retains ownership of all materials installed and the NYSW is obligated to operate and maintain the improvements for a set term, which varies from 10 years to 30 years from completion of the work based upon the funding source. The specific language in each contract varies slightly, but the specific terms of Contract D014370, as set forth in Appendix B, are representative of the general terms agreed to by the NYSW.

#### **NYSW Has Failed to Comply With Its Contractual Obligations:**

Prior to the June 2006 flooding, the NYSW operated and maintained the Line in accordance with the terms of the NYSW's contractual obligations with NYSDOT. The NYSW also continued to seek public funding and make capital investments to the Utica Branch, which included the Line. In fact, at the time of the June 2006 floods, the work on the Utica Branch included in the aforementioned Contract D014370 was ongoing.

As noted in the introduction, the flooding of June 2006 caused significant damage to the transportation infrastructure throughout the region, including a washout on nearby Interstate 88. The NYSW's Utica Branch, including the line, was not spared from the devastation caused

during the June 2006 flooding and NYSW may have been temporarily relieved of their obligations to operate and maintain the Line. However, since June, 2006, NYSW has made no attempt to restore the Line to service and such failure violates several provisions of the various contracts. Although NYSW may have the right to file its Petition with the Surface Transportation Board, the Board should not act on the Petition until such time as the NYSW has complied with its contractual obligations with NYSDOT. As noted earlier, the terms of all contracts are substantially the same. To make it easier to understand, we will use the terms contained in Contract D014370, as set forth in Appendix B, to illustrate the following violations:

1. The NYSW's failure to restore the Line to service violates Section 2.3 whereby the NYSW is obligated to maintain the publicly funded improvements for the terms of the various contracts.
2. The NYSW's failure to restore the Line to service violates Section 2.6 whereby the NYSW agreed that the state investments shall not be rendered unusable without the express written consent of NYSDOT, which has neither been sought by NYSW nor given by NYSDOT.
3. The NYSW's failure to restore the Line to service violates Section 2.7 which sets forth the following requirements for the discontinuance of service:
  - i. The Project Facilities have not been maintained in accordance with the terms of the contract and, therefore, NYSW is in violation Subparagraph b.
  - ii. The NYSW has not obtained the written permission from the Commissioner of Transportation prior to seeking authority for discontinuance as required by Subparagraph b. The NYSW acknowledged the need for NYSDOT's consent and formally notified NYSDOT of its intent to abandon the Line and sought such consent by letter dated June 25, 2007. This letter is set forth in Appendix C. After careful consideration, NYSDOT informed the NYSW that it could not support the abandonment of the Line during a meeting held on November 20, 2007. There had been no formal communications between the NYSW and NYSDOT regarding the disposition of the Line since the November 20, 2007 meeting until receipt of the 10-day notice included in their petition. As such, the NYSW has not sought nor obtained NYSDOT's consent to discontinue service on the Line as called for under the terms of the contract(s).
  - iii. The NYSW has not reimbursed NYSDOT for the project costs as required by Subdivision D. As of June 26, 2006, such costs are estimated by NYSDOT to be approximately \$1.29 million as summarized in Appendix A. In the NYSW's June 25, 2007 letter to NYSDOT (Appendix C), the NYSW acknowledged their obligation to reimburse NYSDOT for the depreciated value of prior public investments and included an estimate of

those investments in the Line since 1997. NYSDOT reviewed its project records and identified earlier projects which had contained a 30 year operation and maintenance clause which were not identified by the NYSW and for which reimbursement was also required. NYSDOT presented this information to the NYSW at the November 20, 2007 meeting and offered to enter into discussions to reach a mutually agreed upon value. NYSDOT has received no response from the NYSW regarding the disposition of these older obligations. The NYSW also requested that NYSDOT waive repayment in exchange for re-deployment of salvaged materials on the NYSW system. By a July 18, 2007 letter (Appendix D), NYSDOT requested the NYSW to provide specific plans for the re-use of materials. By a letter dated on August 8, 2007 (Appendix E), the NYSW replied that there was no specific capital plan for 2008 and beyond, but indicated that the salvaged materials could be re-used on future publicly funded improvements. NYSDOT does consider the NYSW's offer to have the public pay for installation of these materials a second time as adequate compensation for these prior investments.

#### **Other Factors:**

We understand that the New York State Empire State Development Corporation (ESDC) separately provided the NYSW with \$3,000,000 for rehabilitation work on the Utica Main, circa 2003. As NYSDOT was not a party to that contract, NYSDOT does not have any specific information regarding the location and scope of improvements to the Utica Branch funded by ESDC to determine what portion of the expenditures were made on the Line. However, ESDC has advised NYSDOT that, unlike the above NYSDOT contracts for track and structure rehabilitation, there is no contractual obligation on the part of the NYSW to request written approval from ESDC for abandonment or discontinuance of service on the Line and there are no specific contractual provisions for ESDC to recover the value, after depreciation, of the materials installed if the NYSW abandons or discontinues service on the Line.

As there is no contractual obligation on the part of the NYSW to repay funds to ESDC, NYSDOT is not requesting the NYSW do so. However, the NYSDOT has brought this to the Board's attention so as to emphasize the overall scope of the public investments in the Utica Branch, which includes the Line and the representations of the NYSW to various public entities regarding the expectation for continued operation and maintenance of the line prior to the 2006 flooding.

#### **Relief Sought:**

NYSDOT petitions the Board to stay the effective date of the NYSW's petition for discontinuance of service on the Utica Branch pending the resolution of the NYSW's outstanding contractual obligations.

As noted above, NYSDOT has estimated the NYSW's liability for the depreciated value of prior investments as approximately \$1.29 million as summarized in Appendix A. To date,

NYSW has not repaid any of this money to NYSDOT and there have been no efforts on the part of the NYSW to reach a mutually agreed upon valuation of these investments. NYSDOT stands ready and willing to engage in discussions to resolve this issue.

NYSW has not sought nor obtained the concurrence of NYSDOT for the discontinuance of service on the Utica Branch. While the NYSW did seek NYSDOT's concurrence for an abandonment of the line in 2007, such concurrence was withheld as NYSDOT did not agree with the NYSW's estimate of prior public investments and did not agree with the NYSW's proposal to reinstall salvageable materials at further public expense in-lieu of repayment.

I am, by copy of this letter, serving this request on all interested parties.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert A. Rybak", with a long horizontal flourish extending to the right.

ROBERT A. RYBAK  
Division of Legal Affairs

Cc: Eric M. Hocky, Esq. (Sent via e-mail)

# Appendix A -- Summary of NYSDOT investments in NYSW's Utica Branch

Project PIN	Contract ID #	Project Description	Fund Source	Recoverability Clause	Contract Total \$	Amount Expended Within Abandonment	Contract Term End Date	Net Present Value as of 6/27/06
S937 31 301	D014170	Rehabilitation of Syracuse & Utica Branches	\$80 m PFRAP	10 yr op & maint w / str line dep	\$ 6,300,000	\$ 645,893	12/31/17	\$ 645,893
S935 77 301	D250477 <sup>1</sup>	Utica Branch Rehabilitation (DO1 Let) <sup>1</sup>	1979 Bond	See D000234	\$ 2,881,932	\$ 687,250	11/13/14	\$ 192,812
S935 77 301	D001419 <sup>1</sup>	Utica Branch Rehabilitation (t-A Work) <sup>1</sup>	1979 Bond	See D000234	\$ 495,924	\$ 124,000	11/13/14	\$ 34,789
S935 77 302	D000234	Maintenance of D250477 & D001419	n/a	30 yr op & maint w / str line dep	\$ 0	\$ 0	11/13/14	\$ 0
S937 24 301	D014134	Rehabilitation of Syracuse & Utica Branches	MM 1	10 yr op & maint w / str line dep	\$ 2,000,000	\$ 178,042	12-31/15	\$ 169,140
2935 46 301	D021017	Rehabilitation of Utica Branch	MM 2000	10 yr op & maint w / str line dep	\$ 550,000	\$ 226,600	12/31/14	\$ 192,610
9935 23 301	D012040	Track Rehabilitation, Utica Branch	MM 1	10 yr op & maint w / str line dep	\$ 100,000	\$ 100,000	12/31/11	\$ 55,000
<b>SUBTOTAL CAPITAL PROJECTS:</b>					<b>\$ 12,327,856</b>	<b>\$ 1,961,785</b>		<b>\$ 1,290,244</b>
9932 03 321	D008258	GX U209 05 Winston Road, Greene	Sec 130	NYSW maint	\$ 95,068	\$ 95,068		\$ 0
9932 02 321	D008259	GX U228 40 Haynes Road, Norwich	Sec 130	NYSW maint	\$ 88,700	\$ 88,700		\$ 0
9932 34 321	D011945	GX U232 08 Prentice Road, Norwich	Sec 130	NYSW maint	\$ 363,922	\$ 363,922		\$ 0
9932 35 321	D014185	GX U213 95 Hogsback Road,	Sec 130	NYSW maint	\$ 133,000	\$ 133,000		\$ 0
9930 44 321	Unknown	GX U Pleasant Road	Unknown	See D000234	Unknown	Unknown		\$ 0
9930 35 321	Unknown	GX U Borden Avenue	Unknown	See D000234	Unknown	Unknown		\$ 0
9930 61 321	Unknown	GX U Washington Street	Unknown	See D000234	Unknown	Unknown		\$ 0
<b>SUBTOTAL GX DEVICES:</b>					<b>\$ 680,690</b>	<b>\$ 680,690</b>		<b>\$ 0</b>
<b>TOTALS:</b>					<b>\$ 13,008,546</b>	<b>\$ 2,642,475</b>		<b>\$ 1,290,244</b>

1 This DOT administered construction contract, and associated force account contract has exceeded the term of DO1's records retention policy for no-plans projects (10 years). As such, all paper records have been destroyed. The Freight Transportation Division database indicates that this project included the reconstruction of 36 grade crossings on the Utica Branch in Broome, Chenango, Madison, & Oneida Counties, with the final costs as indicated in the table above, and a construction completion date of 11/13 84. For the purposes of these calculations, the NYSDOT Freight Bureau has pro-rated the dollar value of the contracts equally over 36 crossings and assumed the scope to include all state highways, all county highways, and local roads with the highest AADT. Nine such crossings are located within the limits of the proposed abandonment.

## **Appendix B Excerpts of Contract D014370**

### **Section 2.3 Maintenance**

GRANTEE [NYSW] agrees to maintain, or arrange to have maintained at no expense to the STATE, the Project Facilities, as well as ancillary facilities useful or necessary for providing rail transportation services thereon or therewith, in accordance with usage, for the term of the Agreement as defined in Section 3.17 of this Agreement.

### **Section 2.5 Title to Materials**

The materials installed at STATE expense pursuant to this Agreement, excluding the underlying land, shall be the property of the STATE and title thereto shall be vested in the STATE at the time of acquisition and shall remain vested in the STATE for the term of this Agreement. Upon completion of the term of this Agreement as identified in Section 3.17 herein, title shall be vested in the GRANTEE without the need of any execution and delivery of deeds, bill of sale or other title document.

### **Section 2.6 Use and Disposition of Project Facilities**

Upon completion and acceptance of the Project Facilities by GRANTEE, GRANTEE shall certify in writing to the COMMISSIONER that the Project Facilities have been completed and accepted in accordance with the WORK SCHEDULE.

GRANTEE shall use or cause to be used and provide or cause to be provided rail service on or in connection with the Project Facilities in a careful and proper manner and comply with and conform to or cause to be complied with and conformed to all applicable Federal, State, and Local laws, ordinances and regulations in any way relating to the use, rail service, or maintenance thereof.

GRANTEE agrees that, during the period of time during which Title to the Project Facilities paid for by the STATE is held by the STATE or in any event if funding of the STATE's share is from the proceeds of bonds or other obligations issued by the STATE or any of its public benefit corporations, such Project Facilities shall not be sold, rendered unusable, relinquished, or disposed of by GRANTEE without the express written consent of the COMMISSIONER have first been obtained.

### **Section 2.7 Abandonment**

GRANTEE shall have the right to abandon part or all of the Project Facilities, or to discontinue or curtail service thereover, provided that

- a. Said abandonment, discontinuance or curtailment of service has been authorized by the Federal Surface Transportation Board or any body having jurisdiction thereof.

- b. At the time of abandonment, discontinuance or curtailment of service, the Project Facilities shall comply with all provisions of said Agreement, and
- c. The GRANTEE has obtained the written permission of the COMMISSIONER prior to abandoning any or all of the Project Facilities.
- d. Should GRANTEE exercise this right to abandon part or all of the Project Facilities or permanently discontinue use thereof, GRANTEE shall reimburse STATE for Project Costs previously reimbursed by STATE under this Agreement based on straight line depreciation of Project Costs reimbursed by STATE calculated over the term of this agreement



**Appendix C**  
**NYSW's June 25, 2007 letter**

**The New York, Susquehanna and Western Railway Corporation**

**1 Railroad Avenue  
Cooperstown, NY 13326  
607-547-2555**

**Nathan R. Fenno  
President  
[nfenno@nysw.com](mailto:nfenno@nysw.com)**

**Fax: 607-547-9844  
[www.nysw.com](http://www.nysw.com)**

**June 25, 2007**

**Brian Rohback  
New York State Department of Transportation  
50 Wolf Road, 5-4  
Albany, NY 12232**

**RE: NYS&W Utica Branch**

**Dear Mr. Rohback:**

The New York, Susquehanna and Western Railway Corporation ("NYS&W") has enjoyed a long and productive relationship with NYSDOT. This relationship commenced with NYS&W's initial efforts in 1982 to save the former DL&W lines in Central New York which were then slated for abandonment by Conrail (a project that could not have been undertaken without support from NYSDOT and the local County Industrial Development Agencies), and has continued through years of NYSDOT funded grade crossing improvements, track improvements and economic development projects (through the Industrial Access Program). As a result of this joint public-private effort, rail service was maintained and improved to support the region's industrial and agricultural businesses.

Despite these efforts, larger economic forces have caused changes in traffic patterns and loss of business. As a result, use of the Utica Main, which in 1982 carried the bulk of the rail traffic on NYS&W's lines, has dwindled, while use of the Syracuse Main has increased. The negative impact on the Utica Main was exacerbated by the severe flooding of April, 2005 and June 26, 2006. Although NYS&W was able to return the Utica Main to service after the 2005 flooding, the line has been out-of-service between MP 209 near Greene, NY and MP 244 in Sherburne, NY since the 2006 flooding. As you can see from the attached photos, the damages in this area were severe in excess of \$400,000 (NYS&W experienced, and repaired, over \$1 million of damage to other areas of its track from the same flooding.)

Despite this flood damage, NYS&W has been able to maintain rail service to its 16 customers on the Utica Main, all of which are located between Sherburne, NY and Utica, NY (see the attached customer map) and will continue to do so. However, there has been no customer located on the out-of-service portion of the line since 2002, and there are no prospective customers at this time. As a result, NYS&W is not able to allocate any of its scarce resources to this portion of the line.

Due to this set of circumstances, NYS&W plans to seek authority from the Surface Transportation Board for abandonment of the out-of-service portion of the Utica Main. The first step in that process, filing of a system diagram map, was completed on November 2, 2006 (system diagram map is attached)

NYS&W has always been in the business of trying to save rail lines that others have deemed unnecessary, and has not reached this decision quickly or without due consideration. We have also consulted with government and community leaders in Chenango County, both to keep them informed and to raise their awareness of the opportunities they may have for rail banking or a rails to trails project. At this time, with no foreseeable potential for a need for rail service in this area, our conclusion is inevitable.

As noted above, NYS&W has been the recipient of substantial support from NYSDOT and others over the years. The prospect of abandonment raises issues that need to be addressed in regard to past funding. The attached schedule lists funding NYS&W has received over the past 10 years, divided into two main categories:

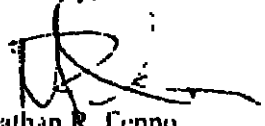
1. Grade Crossing Improvements In the subject area, NYS&W has received \$286,147 since 1997 for grade crossing improvements. There are 32 highway grade crossings in the subject area. NYS&W's expectation is that it will recover the grade crossing protection equipment from all of these crossings and retain the same for use on other grade crossings in the State of New York.
2. Track Improvement Projects NYS&W has received \$1,050,535 in government funding for track improvements on the subject line since 1997.

As noted, several of the NYSDOT grant agreements contain requirements for continued rail service, for NYSDOT consent for abandonment, and for partial repayment in the event of such abandonment. In the past, in like circumstances, NYSDOT has waived any financial repayment in exchange for a commitment by the Railroad to use the salvaged track materials (primarily reusable railroad ties) for improvement of other rail lines within the State. At this time, NYS&W is seeking such an arrangement.

Additionally, NYS&W believes it is in the region's and State's interest that this rail corridor should be preserved, either through rail banking or a rails to trails project. The recent reopening of the former Staten Island Railway is a prime example of the benefit of such a program. Although public officials in Chenango County seem receptive, we believe NYSDOT leadership is essential if the corridor is to be preserved, particularly under the federal trails provisions.

I look forward to your early consideration of this request.

Sincerely,

  
Nathan R. Fenno  
President

NRF:ksp  
lmc

**Appendix D**  
**NYSDOT's July 18, 2007 letter**



STATE OF NEW YORK  
DEPARTMENT OF TRANSPORTATION  
ALBANY, N Y 12232

July 18, 2007

ASTRID C. GLYNN  
COMMISSIONER

ELIOT SPITZER  
GOVERNOR

July 18, 2007

Nathan R. Fenno, President  
The New York Susquehanna & Western Railway Corp  
1 Railroad Avenue  
Cooperstown, NY 13326

**RE: NYS&W Utica Branch**

Dear Mr. Fenno,

The Department of Transportation is seeking additional information with respect to the proposed abandonment of the Utica Branch and the continuing obligations of the NYS&W under various grant agreements with the Department as described in your letter of June 25, 2007.

- **Please clarify the milepost limits of the proposed abandonment.**  
The text of your letter refers to the damaged portion of the line as MP 209 to MP 244. At the same time, the system diagram map filed with the Surface Transportation Board describes the limits subject to abandonment as MP 202.62 to MP 263.50.
- **Please describe any insurance claims made pursuant to the flooding of June 2006, any payments received, and any repairs completed with such funds.**
- **Please provide an inventory of materials installed at state expense within the line segment subject to abandonment.**  
The Department is reviewing our project records to determine the types and quantities of materials installed on the Utica Branch and potentially subject to abandonment. We request that the NYS&W prepare similar documentation so that NYSDOT and the NYS&W can reach consensus on the value of state-owned materials. The NYS&W should include a preliminary determination of whether such materials are salvageable or scrap.
- **Please provide a specific proposal for reuse of state-owned salvageable materials.**  
As you note, the Department has allowed for re-use of state-owned materials elsewhere in the state or substitution of assets in lieu of repayment under similar circumstances in the past. In order to obtain such approval, please provide information on the proposed reuse, including location, quantities of materials, timing, and any other pertinent details.

- **Please describe the operational and commercial impact of the proposed abandonment.**

While the NYS&W has maintained the ability to serve all the remaining customers on the Utica Branch, commercial access to Norfolk Southern and Canadian Pacific for these shippers has been affected. Please describe the operational issues associated with the abandonment (we assume the NYS&W would move the NS and CP traffic to Syracuse, where CSX would move it to Utica) and the impacts to transit time and service reliability.

- **Please describe the short, medium, and long term plans for operation of the remaining portion of the Utica Branch.**

The proposed abandonment would render the remaining portion of the Utica Branch orphaned from the remainder of the NYS&W system. The Department seeks assurances that the NYS&W will continue to meet its contractual obligations with respect to the Department's prior investments.

If you should have any questions regarding this request, please contact me at (518) 457-8075 or via email at [rhessinger@dot.state.ny.us](mailto:rhessinger@dot.state.ny.us)

Sincerely,



Raymond F. Hessinger, P.E.  
Rail Program Delivery Bureau

cc K Rae, Assistant Commissioner Policy & Strategy, 6<sup>th</sup> Floor  
D Hannon, Office of Program Development & Management, POD 5-4  
R Lammerts, Rail Program Delivery Bureau, POD 5-4  
D Clements, Regional Rail Coordinator, R-2  
W Barber, Regional Rail Coordinator, R-9

**Appendix E**  
**NYSW's August 8, 2007 letter**

**FILE COPY**

**The New York, Susquehanna and Western Railway Corporation**

**1 Railroad Avenue  
Cooperstown, NY 13326  
607-547-2555  
Fax 607-547-9831  
www.nysw.com**

**Nathan R. Fenn  
President  
[nfenn@nysw.com](mailto:nfenn@nysw.com)**

**August 8, 2007**

**Raymond F. Hessinger, P.E.  
Rail Program Delivery Bureau  
State of New York Dept. of Transportation  
50 Wolf Road  
Albany, NY 12232**

**RE: Utica Branch**

**Dear Mr. Hessinger:**

I thank you for your July 18, 2007 letter, received July 23, 2007. We appreciate the opportunity to work cooperatively with NYSDOT regarding the future of the southern portion of the Utica Branch. In regard to your questions and requests for information, please note the following:

- NYS&W's current intent is to seek abandonment authority for MP 209 (Greene) to MP 244 (Sherburne). As you state, the system diagram map identifies a larger section as being potentially subject to abandonment, while we cannot represent that authority to abandon MP 202.62 to MP 209 and/or MP 244 to MP 263.50 will not be sought in the future. NYS&W does not seek to abandon those lines at this time.
- NYS&W and its affiliate, Central New York Railroad ("CNY") had flood damage insurance with an aggregate limit of \$1 million subject to a self-insured retention of \$150,000. NYS&W and CNY each received grants of \$5,000 from the New York Department of Labor Individual & Family Grant Program and \$20,000 from the Empire State Development Small Business Flood Recovery Grant Program. NYS&W and CNY used these funds, the insurance proceeds, and over \$100,000 of its working capital to repair flood damage between Syracuse and Binghamton, Binghamton and Port Jervis, and Utica and Sherburne, where it has active customers.
- Other than highway grade crossing equipment installed at State expense, NYS&W estimates that it installed approximately 6,522 railroad ties (industrial grade) in the subject track. NYS&W expects that the majority of these ties can be recovered and re-used. Re-use of ballast is uneconomic, and would compromise the potential of the line for a rails-to-trails project.
- At this time, NYS&W has not developed its capital budget for 2008 and beyond. NYS&W's capital plans are often dependent upon the availability of outside sources for financing. NYS&W and CNY have submitted funding requests to NYSDOT for the



to plan future projects on the lines between Binghamton-Syracuse and Binghamton-Port Jervis, and anticipate that all of the ties recovered could be utilized on those lines


- At the time of the 2006 flooding, NYS&W was able to make temporary detour arrangements with CSX for haulage of cars in NYS&W's account from Syracuse to Utica, via the MA&N. Since NYS&W's interchange with CSX was only at Syracuse, those arrangements covered all traffic to and from the line (CP, NS and CSX traffic). Frankly, while service continued, the reliability and timeliness of service suffered. In March, 2007 CSX and NYS&W opened a new interchange at Utica which has improved service performance as to some of the traffic.

Prior to the 2006 flooding, railcars to or from the line which were routed over NYS&W's interchanges with NS or CP at Binghamton enjoyed a competitive advantage over traffic handled via the CSX interchange in Syracuse, due to the relatively shorter length of haul on NYS&W. The opening of the CSX interchange in Utica, and the higher costs and lower service levels resulting from the changed routing (Binghamton-Syracuse-Utica) has significantly reversed the relative competitive positions. NYS&W believes it can provide NYSDOT with several customer contacts who will confirm the improvement in service, should you so desire.

- As you can see from the information previously provided, the bulk of the current customers are situated on the northerly 20 miles of the line, with a few in the Sherburne area. At this time, NYS&W has no plans to change its existing service to any of these customers, but, as stated above, changes in circumstances could result in NYS&W seeking further abandonment or discontinuance authority. As in the present instance, NYS&W would exhaust all alternatives and consult with both local authorities and NYSDOT prior to taking any action. NYS&W's request for NYSDOT's consent, under the existing contracts, to the proposed abandonment between MP 209 and MP 244 is based upon our belief that the purpose of the State funding is to help provide efficient, reliable and cost-effective rail service to current and reasonably anticipated rail shippers. Requiring NYS&W to expend its scarce resources to rebuild and maintain 36 miles of track with no current or anticipated traffic would be counterproductive to that purpose and weaken the balance of NYS&W's lines.

We look forward to continuing to discuss these issues with you, and will be available to meet in Albany should you desire.

Sincerely,



Nathan R. Ferno  
President

NRF:k-p

cc: Marion McQueen, Director, State Development Corp.